IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN TYRONE RUFFIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52049

FILED

JAN 22 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

On January 21, 2000, appellant was found guilty, pursuant to a jury verdict, of one count of burglary and one count of larceny from the person. The district court subsequently adjudicated appellant a habitual criminal and sentenced appellant to serve two consecutive terms of life in prison with the possibility of parole. This court affirmed the judgment of conviction on direct appeal. Ruffin v. State, Docket No. 36330 (Order of Affirmance, November 19, 2001).

Appellant then filed a motion to modify sentence and a post-conviction petition for a writ of habeas corpus in the district court. Among other things, appellant challenged his habitual criminal adjudication. The district court denied the petition and motion. On appeal, this court reversed the order of the district court denying appellant's claim regarding habitual criminal adjudication. Although the sentencing hearing transcript indicated that the district court had been presented with proof of the prior convictions, the prior convictions were not contained in the

record on appeal and the clerk of the district court informed this court that the clerk's office was unable to locate the documents. Because the record on appeal did not contain the prior convictions, this court was not able to conduct a meaningful review of the district court's orders resolving appellant's claims attacking his habitual criminal adjudication. Consequently, this court directed the original judgment of conviction to be vacated, and reversed the decision to deny the petition in part, and remanded for a new sentencing hearing.[1] The district court was further directed to appoint counsel and insure that a complete and accurate record was maintained. This court expressly indicated that the State may in its discretion seek habitual criminal adjudication at the new sentencing hearing. Ruffin v. State, Docket Nos. 40055, 41162 (Order Dismissing in Part, Affirming in Part, Reversing in Part, and Remanding, June 8, 2004).

Upon remand, the district court appointed counsel to assist appellant and conducted a new sentencing hearing. At the conclusion of the second sentencing hearing, the district court again adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction on appeal. Ruffin v. State, Docket No. 45598 (Order of Affirmance, April 6, 2007). The remittitur issued on May 2, 2007.

On June 4, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

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[1]This court dismissed the appeal from the order of the district court denying the motion to modify as moot.

motion. On July 16, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that Double Jeopardy barred a second enhancement proceeding when evidence at the first proceeding was insufficient to establish the prior convictions. Appellant further appeared to claim that the issue of habitual criminality should have been decided by a jury.

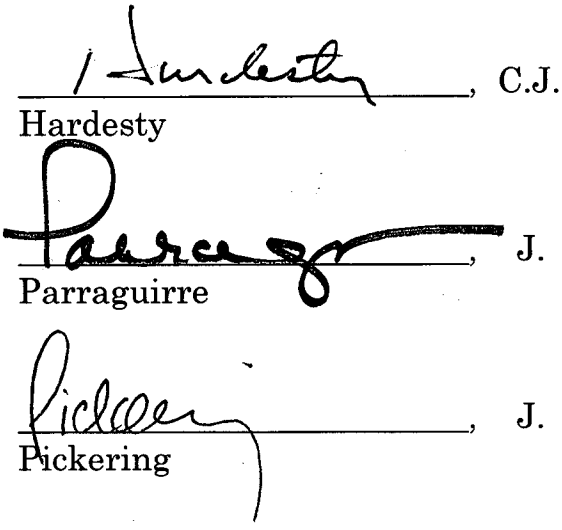
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permitted in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was not a competent court of jurisdiction. NRS 207.010. Further, these claims were considered and rejected on direct appeal. The doctrine of the law of the case prevents further litigation of these issues. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Therefore, we affirm the order of the district court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]



_____, C.J.
Hardesty

_____, J.
Parraguirre

_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Kevin Tyrone Ruffin
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[2]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.